

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY WARSAW

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E.O.11652:NA

TAGS: EFIN

SUBJECT: PROPOSED INCOME TAX CONVENTION

REF: WARSAW 3703 (#)

1. AS WE UNDERSTAND IT THE TURNOVER TAX IS IMPOSED JOINTLY WITH THE INCOME TAX ONLY IN THE TWO CASES COVERED IN ARTICLE 3, PARA. 2 AND ARTICLE 8 PARA 1 SUBPARA 3 OF THE LAW OF NOVEMBER 2, 1973.

2. PLEASE ASCERTAIN WHETHER IN THOSE CASES THE "JOINT" TAX CAN BE BROKEN DOWN INTO ITS COMPONENT PARTS, AND IF SO, HOW THE BREAK DOWN WOULD BE ACCOMPLISHED (E.G. WHAT PART OF THE 10 PERCENT OF COMMISSIONS IN THE CASE UNDER ARTICLE 3, PARA 2 CONSTITUTES THE TURNOVER TAX ELEMENT AND WHAT PART THE INCOME TAX ELEMENT).

3. IF THE TURNOVER TAX CANNOT BE SEPARTED FROM THE INCOME TAX THEN WE WOULD HAVE TO CONSIDER WHETHER

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THE TWO SITUATIONS MENTIONED ABOVE SHOULD BE EXCLUDED

FROM THE CONVENTION. IF THEY WERE TO BE INCLUDED UNDER THE CONVENTION, IT WOULD MEAN ON POLAND'S SIDE THAT THEY WOULD NOT IMPOSE THE JOINT TURNOVER AND INCOME TAX IN CASES WHERE THEY HAVE AGREED NOT TO IMPOSE INCOME TAX UNDER THE CONVENTION. AND ON OUR SIDE IT WOULD MEAN THAT WHERE THE JOINT TAX DOES APPLY, IT WILL BE CREDITABLE AGAINST US INCOME TAX. THIS WOULD CREATE AN ANOMALOUS SITUATION FOR US BECAUSE IT WOULD REQUIRE US TO GIVE A CREDIT FOR A TURNOVER TAX NORMALLY NOT CREDITABLE, SIMPLY BECAUSE POLAND CHOOSES TO CONSIDER THAT IT CONSISTS OF TWO INDISTINGUISHABLE ELEMENTS ONLY ONE OF WHICH IS IN PRINCIPLE CREDITABLE.

4. IF IN FACT THERE ARE TWO DISTINCT TAXES, A TAX ON TURNOVER AND A TAX ON INCOME, THEN WE ARE PREPARED NOT TO COVER THE TURNOVER TAX IN THE CONVENTION.

5. DRAFT TEXT OF A NOTE ON STATE TAXES WILL FOLLOW NEXT WEEK. SISCO

NOTE BY OC/T: REFERENCE BELIEVED TO BE WARSAW 3708.

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